Supreme Court
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MAR
E. ROBERT

No. 71-961

In the Supreme Court of the United States

OCTOBER TERM, 1971

EDWARD LEE ROBERTS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

RICHARD LEE PLOWDEN & DALE T. PLOWDEN, PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioners [1] brought these suits for refund of 1960, 1961 and 1962 income taxes in the district court. They previously had filed petitions in the Tax Court seeking redeterminations of the deficiencies proposed by the Commissioner of Internal Revenue for the same

[1] References to "petitioners" are to Richard Lee Plowden and Edward Lee Roberts. Dale T. Plowden is a party solely because she filed joint income tax returns with her husband.

years. The Tax Court sustained the Commissioner's determinations (48 T.C. 666), and the Court of Appeals for the Fourth Circuit affirmed *per curiam* (398 F. 2d 340). This Court denied a petition for certiorari (393 U.S. 936).

More than two years later, petitioners instituted the present refund suits. The district court dismissed these suits for want of jurisdiction because petitioners' tax claims for the years in issue had already been heard and adjudicated by the Tax Court. The court of appeals, in a yet unreported decision, affirmed *per curiam* on December 29, 1971. The petition for a writ of certiorari was filed on January 29, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

The decision below, affirming the dismissal order of the district court, is correct. There is no conflict of decisions or any other reason for further review.

With exceptions not here relevant, Section 6512(a) of the Internal Revenue Code of 1954 grants to the Tax Court exclusive jurisdiction to redetermine a taxpayer's entire tax liability for any taxable year as to which a petition has properly been filed in the Tax Court. Since petitioners filed petitions in the Tax Court before instituting these refund suits for the same years, that court had exclusive jurisdiction over petitioners' tax liabilities for the years in issue. The district court accordingly was correct in dismissing petitioners' complaints. *United States* v. *Wolf*, 238 F. 2d 447 (C.A. 9); *Elbert* v. *Johnson*, 164 F. 2d 421 (C.A. 2); *Empire Trust Co.* v. *United States*, 214 F. Supp. 731, affirmed, 324 F. 2d 507 (C.A. 2).

Res judicata also bars petitioners' relitigation of their tax liabilities for 1960–1962 in the district court. The new issue they seek to raise (Pet. 2) involves transactions which occurred in 1961 and 1962. Since petitioners have already litigated their causes of action for those tax years to a final judgment on the merits, they are bound by the results, and may not relitigate either the issues determined or those that could have been determined in the earlier litigation. *United States* v. *International Building Co.*, 345 U.S. 502, 506; *Commissioner* v. *Sunnen*, 333 U.S. 591.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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